802.5

[redacted]

Writ[redacted]

May 9, 2003

BY HAND

Michael B. Verne, Esq.
James Ferkingstad, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Telephone Conversation on May 8, 2003

Dear Michael and James:

This letter serves to confirm our telephone conversation of Thursday, May 8, 2003. Pursuant to that conversation, we agreed that under the factual scenarios described below, there would be no reporting obligation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act"), 15 U.S.C. §18a. In particular, we agreed that such a transaction would qualify for an exemption pursuant to §802.5 of the HSR Rules, 16 C.F.R.§802.5 (notwithstanding that the size-of-persons and size-of-transaction tests are met).

The facts we discussed are as follows:

Company A owns a number of facilities and leases those facilities to company B. These facilities include real estate, buildings, and improvements, and are used by B in a service

Michael B. Verne, Esq.
James Ferkingstad, Esq.
May 9, 2003
Page 2

industry. B has publicly announced that it intends to exit the business it conducts at 15 to 20 of these facilities. B negotiated with A, seeking A's consent to sublease the relevant facilities to a third company, C, but no agreement was reached on such a sublease. However, A has now agreed to sell the facilities to B, which enables B to sell them on to C, together with B's operations conducted at the facilities.

There will be a gap in time, currently estimated at around 30 to 120 days, between the closing of A's sale of the facilities to B and the closing of B's sale to C. In order to permit the continuous operation of the facilities during this interim time period, three possibilities have been considered. Under the first scenario, B would lease the facilities to C prior to the closing of the sale from B to C. Under the second scenario, B would continue to operate the facilities itself prior to the closing of the sale from B to C. Under the third scenario, B would continue to operate the facilities for a part of the interim time period, then lease the facilities to C for the remainder of the interim time period. In all three cases, the reason B is purchasing the facilities is to sell them (along with its own operations conducted at these facilities).[1]

Based on our call, I understand that you would view the acquisition by B (from A) as exempt under §802.5 of the HSR Rules, as B would hold the acquired assets "solely for rental or investment purposes."

Please call me at [redacted] to confirm that this letter accurately summarizes our conversation and your views on this issue. I would greatly appreciate it if you could call me by Monday, May 12.

Very truly yours

[redacted]

Agree.
B. Michael [illegible]
5/12/03

[1] A further possible variation (on the first and third scenarios) that we did not discuss is the following: B leases the facilities to C. However, for some reason C cannot consummate the purchase from B and B thus is forced to sell to D, another third party. While we believe that this would not affect the analysis of the transaction as exempt under §802.5 of the HSR Rules, we would appreciate receiving confirmation that you share our view.